

Remarks

Claims 2-22 are pending in the application.

Claims 2-5, 7/4-5, 8, 9, 10/2-5, 11-15, 17-22 and 16/2-5 stand rejected. Claims 6, 7/6, 10/6 and 16/6 were objected to.

The Examiner objected to claim 21 because it was labelled as "currently amended" when no amendments were made. Applicant has amended claim 21 herein to correctly indicated that it is as originally filed.

The Examiner objected to claims 10-14, 18-22 as being indefinite in that Applicant claims the catalyst apex is being "1% to 5% of the length of the foot". The Examiner states that there is no antecedent basis for the foot as no foot is distinctly claimed in claim 2 or 10 and accordingly the measurement is indefinite.

Applicant respectfully disagrees with the Examiner's characterization of claim 2. Claim 2 introduces in its second line "a wearer's foot" therefore forming antecedent basis for subsequent reference to "the wearer's foot" in line 3 and "said wearer's foot" in line 9. For the sake of consistency, Applicant has amended claim 2 in line 3 to use the definite article "said" rather than the definite article "the" in order to be consistent with line 9.

Claim 10 has been amended to change reference to "a human foot" or "the foot" to "said wearer's foot" in order to be consistent with the antecedent in claim 2.

Applicant appreciates that a foot is not part of the article claimed however as the claim is to an article of footwear, a person skilled in the art would appreciate the respective dimensions and geometries on the basis of a notional foot for which the article is intended.

The Examiner states that claims 20 and 22 claim a radial geometry region and asks whether this is the radial region (11) shown in Figure 5 or Figure 7. The Examiner further states that only the one shown in Figure 5 aligns with the long axis centre rotation of the wearer's foot. Applicant respectfully directs the Examiner to the passage commencing on page 16 at line 17 and continuing through page 17, line 15. With reference to Figures 5 and 8, there are two radial geometry regions. A forefoot one at reference 35 and a rearfoot one at reference 11. The rearfoot

one is in the heel region of the wearer's foot whereas the forefoot one is immediately behind the first metatarsal bone 26 below the first metatarsal sagittal plane axis of rotation 33. Claim 20 claims the forefoot radial geometry region, as does claim 22.

The radial geometry region (11) shown in Figure 5 is that set out in claim 8 which specifies that the convex curvature of the heel region (introduced in claim 7) has a transverse radius of curvature approximately coincident with a long axis of rotation of the wearer's foot.

The Examiner states that claims 2 and 3 are anticipated by U.S. Patent No. 5,317,819 (Ellis). The Examiner states that "...it appears that in at least one of the embodiments taught by Ellis has the transverse radius of curvature coincident and alignable as claimed". Applicant respectfully points out that the present invention is an engineered shoe which has specific curvatures designed to coincide with the pivotal points of a wearer's foot. As set out in Applicant's disclosure, this is important from the standpoint of gait mechanics as it avoids undesirable torque reactions. While Ellis may show soles having curved edges, this is a long way from teaching convex curvatures having specifically located radii. Applicant respectfully invites the Examiner to identify any drawing in Ellis or any portion of the description in Ellis which would direct one to selecting the specific geometries claimed in the present application. Quite clearly the illustrations in Figures 9b and 9c are inconsistent with Applicant's claimed structure in view of the flat region 31 which obviously has an infinite radius of curvature rather than one within inches of the sole surface. Nevertheless, Ellis in column 7, line 45 suggests Figures 9b and 9c are illustrative of a main point of Ellis's invention.

The Examiner further states that U.S. Patent No. 4,030,213 (Daswick) teaches a midsole heel structure with convex (compound) curvature. Although the Examiner makes reference to Daswick in the section 102 rejection of claims 2 and 3, the Examiner does not specifically state that Daswick anticipates Applicant's invention. Applicant respectfully points out that Daswick has no illustrations showing a convex curvature having a transverse radius of curvature approximately coincident with a long axis rotation of a wearer's foot. Applicant points out that in column 1 at about line 50, Daswick states that "the rearward extremity of the sole member 7 has a relatively flat undersurface and a substantially triangular cross-sectional configuration which tapers down to zero thickness just forward of the pedestal 5". Applicant respectfully points out

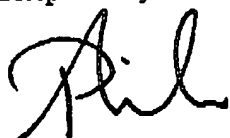
that this is contrary to Applicant's claimed geometry.

The balance of the Examiner's claim rejections deal with claims which are dependent from claims 2 and 3 which Applicant respectfully submits are patentable for the reasons set out above. It stands to reason therefore that the remaining claims are also patentable as defining further features over the patentably distinguishable base claims.

Similarly, the claims to which the Examiner has objected as depending from rejected base claims are also allowable on the basis that the base claims as amended do indeed define a patentable invention.

For all of the reasons set out above, Applicant respectfully submits that the application as amended is in condition for allowance and action toward that goal is respectfully requested. Should the Examiner disagree with Applicant's submissions, Applicant respectfully requests that the Examiner call the Applicant's agent below (contact particulars are set out below) with the intention of scheduling an interview. In this regard, Applicant's agent telephoned the Examiner twice in September (the week of September 6 and on September 13, 2004) leaving messages seeking to schedule a meeting on October 5, 2004, however no reply was received. Accordingly, Applicant would also appreciate the Examiner confirming that the Examiner's contact particulars are as set out on page 8 of the above final action.

Respectfully submitted,



Peter Milne
Registration No. 34,534
Telephone: 416-862-5790
Facsimile: 416-862-7661
Email: peter.milne@gowlings.com

PM:hcu

Enc.

TOR_LAW 58766961